

**PRIVATE ADMONITION. Board Case No. 37, 2005. Effective Date: December 14, 2005.**

A Delaware lawyer was privately admonished for violations of the Delaware Lawyers' Rules of Professional Conduct. The private sanction was offered by a panel of the Preliminary Review Committee ("PRC"), and imposed with the consent of the lawyer.

The lawyer had been retained by a client for representation in connection with personal injuries sustained in an accident. The client signed a written contingent fee and retainer agreement. At that time, the client was married. Subsequently, the lawyer filed a court action on behalf of two plaintiffs, for personal injuries for the client who retained the lawyer's services, and a derivative claim of loss of consortium for the client's spouse. However, unbeknownst to the lawyer, the plaintiffs had separated and divorced prior to the filing of the court action. A settlement was negotiated and funds received on behalf of both plaintiffs. The lawyer then discovered that the parties were divorced and contacted the former spouse regarding the conflict, asking for leave to dismiss the loss of consortium claim or for substitution of counsel. The former spouse submitted a complaint to the ODC. The lawyer then filed a motion to withdraw. Ultimately, the former spouse consented to the court's dismissal of the loss of consortium claim, and gave up any claim to the settlement proceeds.

The lawyer engaged in professional misconduct by failing to obtain from the former spouse a signed written agreement to a contingent fee arrangement for the personal injury matter in which the lawyer was representing him, in violation of **Rule 1.5(c)**. The lawyer also violated **Rules 1.2(a), 1.4(a), and 1.4(b)** by failing to inform and obtain the former spouse's consent regarding representation in the personal injury litigation filed in court on his behalf; failing to keep the former spouse reasonably informed; and negotiating a settlement of the loss of consortium claim without consulting with him and obtaining his consent to do so.

The PRC considered the fact that, under the circumstances of this matter, the lawyer's misconduct did not result in actual injury to the legal interests of the former spouse. Also, as mitigating factors, the PRC considered (1) the absence of a prior disciplinary record; (2) the absence of a dishonest or selfish motive, including the fact that the lawyer filed the court action with the purpose of preserving the claims; (3) the lawyer's cooperation with the ODC in this matter; and (4) the remedial measures taken by the lawyer, including the correction of inaccuracies in the litigation record before the court. The lawyer was required to pay the ODC's costs.